

HOUSE BILL NO. 111

INTRODUCED BY K. FUREY

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING UNEMPLOYMENT INSURANCE LAWS; CLARIFYING THE TREATMENT OF LIMITED LIABILITY COMPANIES; DEFINING THE TERM "LICENSED AND PRACTICING HEALTH CARE PROVIDER"; CLARIFYING EMERGENCY PROVISIONS; REMOVING BONDING REQUIREMENTS; CLARIFYING PROVISIONS FOR TAX APPEALS; RELIEVING CERTAIN EMPLOYERS OF BENEFIT CHARGES ASSOCIATED WITH REHIRING RETURNING MILITARY PERSONNEL; REVISING CONTRIBUTION RATE SCHEDULES; REVISING DISABILITY DISQUALIFICATION; REVISING THE FORMULA FOR EXTENDED BENEFIT AMOUNTS; AMENDING SECTIONS 39-51-201, 39-51-203, 39-51-204, 39-51-301, 39-51-405, 39-51-406, 39-51-1105, 39-51-1109, 39-51-1214, 39-51-1218, 39-51-2302, 39-51-2304, 39-51-2306, AND 39-51-2510, MCA; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Treatment of limited liability companies.** For the purposes of this chapter, a limited liability company is treated as follows:

- (1) as a sole proprietorship if it is a single-member limited liability company;
- (2) as a partnership if it consists of more than a single member and it is not established as a corporation pursuant to the provisions of the Internal Revenue Code for income tax purposes; or
- (3) as a corporation if it is classified as a corporation for income tax purposes pursuant to the Internal Revenue Code.

**Section 2.** Section 39-51-201, MCA, is amended to read:

**"39-51-201. General definitions.** As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

- (1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.
- (2) "Base period" means the first 4 of the last 5 completed calendar quarters immediately preceding the

1 first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the  
2 arrangement approved by the secretary of labor of the United States, the base period is the period applicable  
3 under the unemployment law of the paying state. For an individual who fails to meet the qualifications of  
4 39-51-2105 or a similar statute of another state because of a temporary total disability, as defined in 39-71-116,  
5 or a similar statute of another state or the United States, the base period means the first 4 quarters of the last 5  
6 completed calendar quarters preceding the disability if a claim for unemployment benefits is filed within 24 months  
7 of the date on which the individual's disability was incurred.

8 (3) "Benefit year", with respect to any individual, means the 52-consecutive-week period beginning with  
9 the first day of the calendar week in which the individual files a valid claim for benefits, except that the benefit year  
10 is 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed  
11 new claim. A subsequent benefit year may not be established until the expiration of the current benefit year.  
12 However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor  
13 of the United States, the base period is the period applicable under the unemployment law of the paying state.

14 (4) "Benefits" means the money payments payable to an individual, as provided in this chapter, with  
15 respect to the individual's unemployment.

16 (5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

17 (6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June  
18 30, September 30, or December 31.

19 (7) "Contributions" means the money payments to the state unemployment insurance fund required by  
20 this chapter but does not include assessments under 39-51-404.

21 (8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

22 (9) (a) "Domestic or household service" means employment of persons other than members of the  
23 household for the purpose of tending to the aid and comfort of the employer or members of the employer's family,  
24 including but not limited to housecleaning and yard work.

25 (b) The term does not include employment beyond the scope of normal household or domestic duties,  
26 such as home health care or domiciliary care.

27 (10) "Employing unit" means any individual or organization, including the state government and any of  
28 its political subdivisions or instrumentalities or an Indian tribe or tribal unit, partnership, association, trust, estate,  
29 joint-stock company, insurance company, limited liability company or limited liability partnership that has filed with  
30 the secretary of state, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee

1 or the trustee's successor, or legal representative of a deceased person in whose employ one or more individuals  
2 perform or performed services within this state, except as provided under 39-51-204(1)(a) and (1)(q). All  
3 individuals performing services within this state for any employing unit that maintains two or more separate  
4 establishments within this state are considered to be employed by a single employing unit for all the purposes  
5 of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee  
6 of an employing unit is considered to be employed by the employing unit for the purposes of this chapter, whether  
7 the individual was hired or paid directly by the employing unit or by the agent or employee, provided that the  
8 employing unit has actual or constructive knowledge of the work.

9 (11) "Employment office" means a free public employment office or branch of an office operated by this  
10 state or maintained as a part of a state-controlled system of public employment offices or other free public  
11 employment offices operated and maintained by the United States government or its instrumentalities as the  
12 department may approve.

13 (12) "Fund" means the unemployment insurance fund established by this chapter to which all  
14 contributions and payments in lieu of contributions must be paid and from which all benefits provided under this  
15 chapter must be paid.

16 (13) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for  
17 which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates a flagrant  
18 and wanton disregard of and for the rights, title, or interest of a fellow employee or the employer.

19 (14) "Hospital" means an institution that has been licensed, certified, or approved by the state as a  
20 hospital.

21 (15) "Independent contractor" means an individual working under an independent contractor exemption  
22 certificate provided for in 39-71-417.

23 (16) "Indian tribe" means an Indian tribe as defined in the Indian Self-Determination and Education  
24 Assistance Act, 25 U.S.C. 450b(e).

25 (17) (a) "Institution of higher education", for the purposes of this part, means an educational institution  
26 that:

27 (i) admits as regular students only individuals having a certificate of graduation from a high school or the  
28 recognized equivalent of a certificate;

29 (ii) is legally authorized in this state to provide a program of education beyond high school;

30 (iii) provides an educational program for which the institution awards a bachelor's or higher degree or

1 provides a program that is acceptable for full credit toward a bachelor's or higher degree, a program of  
 2 postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a  
 3 recognized occupation; and

4 (iv) is a public or other nonprofit institution.

5 (b) All universities in this state are institutions of higher education for purposes of this part.

6 (18) "Licensed and practicing health care provider" means a health care provider who is primarily  
 7 responsible for the treatment of a person seeking unemployment insurance benefits and who is:

8 (a) licensed to practice in this state as:

9 (i) a physician under Title 37, chapter 3;

10 (ii) a dentist under Title 37, chapter 4;

11 (iii) an advanced practice registered nurse under Title 37, chapter 8, and recognized as a nurse  
 12 practitioner or certified nurse specialist by the board of nursing, established in 2-15-1734;

13 (IV) A PHYSICAL THERAPIST UNDER TITLE 37, CHAPTER 11;

14 ~~(iv)~~(v) a chiropractor under Title 37, chapter 12;

15 ~~(v)~~(vi) a clinical psychologist under Title 37, chapter 17; or

16 ~~(vi)~~(vii) a physician assistant under Title 37, chapter 20; or

17 (b) with respect to a person seeking unemployment insurance benefits who resides outside of this state,  
 18 a health care provider licensed or certified as a member of one of the professions listed in subsection (18)(a) in  
 19 the jurisdiction where the person seeking the benefit lives.

20 ~~(18)~~(19) "No-additional-cost service" has the meaning provided in section 132 of the Internal Revenue  
 21 Code, 26 U.S.C. 132.

22 ~~(19)~~(20) "State" includes, in addition to the states of the United States of America, the District of  
 23 Columbia, Puerto Rico, the Virgin Islands, and Canada.

24 ~~(20)~~(21) "Taxes" means contributions and assessments required under this chapter but does not include  
 25 penalties or interest for past-due or unpaid contributions or assessments.

26 ~~(21)~~(22) "Tribal unit" means an Indian tribe and any tribal subdivision or subsidiary or any business  
 27 enterprise that is wholly owned by that tribe.

28 ~~(22)~~(23) "Unemployment insurance administration fund" means the unemployment insurance  
 29 administration fund established by this chapter from which administrative expenses under this chapter must be  
 30 paid.

1           ~~(23)~~(24) (a) "Wages", unless specifically exempted under subsection ~~(23)(b)~~ (24)(b), means all  
 2 remuneration payable for personal services, including the cash value of all remuneration paid in any medium  
 3 other than cash. The reasonable cash value of remuneration payable in any medium other than cash must be  
 4 estimated and determined pursuant to rules prescribed by the department. The term includes but is not limited  
 5 to:

6           (i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness  
 7 periods;

8           (ii) severance or continuation pay, backpay, and any similar pay made for or in regard to previous service  
 9 by the employee for the employer, other than retirement or pension benefits from a qualified plan; and

10           (iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are  
 11 documented by the employee to the employer for tax purposes.

12           (b) The term does not include:

13           (i) the amount of any payment made by the employer for employees, if the payment was made for:

14           (A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal  
 15 Revenue Code;

16           (B) sickness or accident disability under a workers' compensation policy;

17           (C) medical or hospitalization expenses in connection with sickness or accident disability, including  
 18 health insurance for the employee or the employee's immediate family; or

19           (D) death, including life insurance for the employee or the employee's immediate family;

20           (ii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other  
 21 expenses, as set forth in department rules;

22           (iii) a no-additional-cost service; or

23           (iv) wage subsidies received pursuant to the alternative trade adjustment assistance for older workers  
 24 program, 19 U.S.C. 2318.

25           ~~(24)~~(25) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

26           ~~(25)~~(26) "Weekly benefit amount" means the amount of benefits that an individual would be entitled to  
 27 receive for 1 week of total unemployment."

28

29           **Section 3.** Section 39-51-203, MCA, is amended to read:

30           **"39-51-203. Employment defined.** (1) "Employment", subject to other provisions of this section, means

1 service by an individual, by a manager or member of a ~~manager-managed~~ limited liability company ~~that has filed~~  
2 ~~with the secretary of state~~ treated as a corporation pursuant to [section 1], or by an officer of a corporation,  
3 including service in interstate commerce, performed for wages or under any contract of hire, written or oral,  
4 express or implied.

5 (2) (a) The term "employment" includes an individual's entire service performed within or both within and  
6 outside this state if:

7 (i) the service is localized in this state; or

8 (ii) the service is not localized in any state but some of the service is performed in this state and:

9 (A) the base of operations or, if there is no base of operations, the place from which the service is  
10 directed or controlled is in this state; or

11 (B) the base of operations or the place from which the service is directed or controlled is not in any state  
12 in which some part of the service is performed, but the individual's residence is in this state.

13 (b) Service is considered to be localized within a state if:

14 (i) the service is performed entirely within the state; or

15 (ii) the service is performed both within and outside the state, but the service performed outside the state  
16 is incidental to the individual's service within the state; for example, the out-of-state service is temporary or  
17 transitory in nature or consists of isolated transactions.

18 (3) Service not covered under subsection (2) and performed entirely outside the state and on which  
19 contributions are neither required nor paid under an unemployment insurance law of any other state or of the  
20 federal government is considered to be employment subject to this chapter if the individual performing the  
21 services is a resident of this state and the department approves the election of the employing unit for whom the  
22 services are performed in order that the entire service of the individual is considered to be employment subject  
23 to this chapter.

24 (4) Service performed by an individual for wages is considered to be employment subject to this chapter  
25 until it is shown to the satisfaction of the department that the individual is an independent contractor.

26 (5) The term "employment" includes service performed by an individual in the employ of this state or any  
27 of its instrumentalities (or in the employ of this state and one or more other states or their instrumentalities) for  
28 a hospital or institution of higher education located in this state. The term "employment" includes service  
29 performed by all individuals, including those individuals who work for the state of Montana, its universities, public  
30 schools, components or units of universities or public schools, or any local government unit and one or more other

1 states or their instrumentalities or political subdivisions whose services are compensated by salary or wages.

2 (6) The term "employment" includes service performed by an individual in the employ of a religious,  
3 charitable, scientific, literary, or educational organization.

4 (7) (a) The term "employment" includes the service of an individual who is a citizen of the United States  
5 performed outside the United States, except in Canada, in the employ of an American employer, other than  
6 service that is considered employment under the provisions of subsection (2) or the parallel provisions of another  
7 state's law, if:

8 (i) the employer's principal place of business in the United States is located in this state;

9 (ii) the employer has no place of business in the United States, but:

10 (A) the employer is an individual who is a resident of this state;

11 (B) the employer is a corporation that is organized under the laws of this state; or

12 (C) the employer is a partnership or a trust and the number of the partners or trustees who are residents  
13 of this state is greater than the number who are residents of any other state; or

14 (iii) none of the criteria of subsections (7)(a)(i) and (7)(a)(ii) are met, but the employer has elected  
15 coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim  
16 for benefits based on the service under the law of this state.

17 (b) An "American employer", for purposes of this subsection (7), means a person who is:

18 (i) an individual who is a resident of the United States;

19 (ii) a partnership if two-thirds or more of the partners are residents of the United States;

20 (iii) a trust if all of the trustees are residents of the United States; or

21 (iv) a corporation organized under the laws of the United States or of any state."  
22

23 **Section 4.** Section 39-51-204, MCA, is amended to read:

24 **"39-51-204. Exclusions from definition of employment.** (1) The term "employment" does not include:

25 (a) domestic or household service in a private home, local college club, or local chapter of a college  
26 fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and  
27 has domestic or household service employment, all employees engaged in domestic or household service must  
28 be excluded from coverage under this chapter if the employer:

29 (i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the  
30 subject wages attributable to domestic or household service; and

1 (ii) keeps separate books and records to account for the employment of persons in domestic or  
2 household service.

3 (b) service performed by a dependent member of a sole proprietor for whom an exemption may be  
4 claimed under 26 U.S.C. 152 or service performed by a sole proprietor's spouse for whom an exemption based  
5 on marital status may be claimed by the sole proprietor under 26 U.S.C. 7703;

6 (c) service performed as a freelance correspondent or newspaper carrier if the person performing the  
7 service, or a parent or guardian of the person performing the service in the case of a minor, has acknowledged  
8 in writing that the person performing the service and the service are not covered. As used in this subsection:

9 (i) "freelance correspondent" means a person who submits articles or photographs for publication and  
10 is paid by the article or by the photograph; and

11 (ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering  
12 newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to the  
13 employee's main duties, carries or delivers papers.

14 (d) services performed by qualified real estate agents, as defined in 26 U.S.C. 3508, or insurance  
15 salespeople paid solely by commission and without a guarantee of minimum earnings;

16 (e) service performed by a cosmetologist or barber who is licensed under Title 37, chapter 31, and:

17 (i) who has acknowledged in writing that the cosmetologist or barber is not covered by unemployment  
18 insurance and workers' compensation;

19 (ii) who contracts with a salon or shop, as defined in 37-31-101, and the contract must show that the  
20 cosmetologist or barber:

21 (A) is free from all control and direction of the owner in the contract;

22 (B) receives payment for service from individual clientele; and

23 (C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge;

24 and

25 (iii) whose contract gives rise to an action for breach of contract in the event of contract termination. The  
26 existence of a single license for the salon or shop may not be construed as a lack of freedom from control or  
27 direction under this subsection.

28 (f) casual labor not in the course of an employer's trade or business performed in any calendar quarter,  
29 unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual  
30 who is regularly employed by the employer to perform the service. "Regularly employed" means that the service

1 is performed during at least 24 days in the same quarter.

2 (g) service performed by sole proprietors, working members of a partnership, members of a  
3 ~~member-managed~~ limited liability company ~~that has filed with the secretary of state~~ treated as a partnership or  
4 sole proprietorship pursuant to [section 1], or partners in a limited liability partnership that has filed with the  
5 secretary of state;

6 (h) service performed for the installation of floor coverings if the installer:

7 (i) bids or negotiates a contract price based upon work performed by the yard or by the job;

8 (ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;

9 (iii) may perform service for anyone without limitation;

10 (iv) may accept or reject any job;

11 (v) furnishes substantially all tools and equipment necessary to provide the service; and

12 (vi) works under a written contract that:

13 (A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract  
14 obligations;

15 (B) states that the installer is not covered by unemployment insurance; and

16 (C) requires the installer to provide a current workers' compensation policy or to obtain an exemption  
17 from workers' compensation requirements;

18 (i) service performed as a direct seller as defined by 26 U.S.C. 3508;

19 (j) service performed by a petroleum land professional. As used in this subsection, "petroleum land  
20 professional" means a person who:

21 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating  
22 a business agreement for the exploration or development of minerals;

23 (ii) is paid for service that is directly related to the completion of a contracted specific task rather than on  
24 an hourly wage basis; and

25 (iii) performs all services as an independent contractor pursuant to a written contract.

26 (k) service performed by an ordained, commissioned, or licensed minister of a church in the exercise  
27 of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

28 (l) service performed by an individual receiving rehabilitation or remunerative work in a facility conducted  
29 for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by  
30 age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of

1 impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market;

2 (m) service performed as part of an unemployment work-relief or work-training program assisted or  
3 financed in whole or in part by a federal agency, any agency of a state or political subdivision of the state, or an  
4 Indian tribe by an individual receiving work relief or work training;

5 (n) service performed for a state prison or other state correctional or custodial institution by an inmate  
6 of that institution;

7 (o) service performed by an individual who is sentenced to perform court-ordered community service  
8 or similar work;

9 (p) service performed by elected public officials;

10 (q) agricultural labor, except as provided in 39-51-202(2), (4), or (6). If an employer is otherwise subject  
11 to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded  
12 from coverage under this chapter if the employer:

13 (i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the  
14 monetary amount or number of employees and days worked for the subject wages attributable to agricultural  
15 labor; and

16 (ii) keeps separate books and records to account for the employment of persons in agricultural labor.

17 (r) service performed in the employ of any other state or its political subdivisions or of the United States  
18 government or of an instrumentality of any other state or states or their political subdivisions or of the United  
19 States, except that national banks organized under the national banking law are not entitled to exemption under  
20 this subsection and are subject to this chapter the same as state banks, if the service is excluded from  
21 employment as defined in 5 U.S.C. 8501(1)(I) and section 3306(c)(6) of the Federal Unemployment Tax Act;

22 (s) service in which unemployment insurance is payable under an unemployment insurance system  
23 established by an act of congress if the department enters into agreements with the proper agencies under an  
24 act of congress and those agreements become effective in the manner prescribed in the Montana Administrative  
25 Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring  
26 potential rights to benefits under this chapter, acquired rights to unemployment insurance under an act of  
27 congress or who have, after acquiring potential rights to unemployment insurance under the act of congress,  
28 acquired rights to benefits under this chapter;

29 (t) service performed in the employ of a school or university if the service is performed by a student who  
30 is enrolled and is regularly attending classes at a school or university or by the spouse of a student if the spouse

1 is advised, at the time that the spouse commences to perform the service, that the employment of the spouse  
2 to perform the service is provided under a program to provide financial assistance to the student by the school  
3 or university and that the employment is not covered by any program of unemployment insurance;

4 (u) service performed by an individual who is enrolled at a nonprofit or public educational institution that  
5 normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in  
6 attendance at the place where its educational activities are carried on, as a student in a full-time program taken  
7 for credit at an institution that combines academic instruction with work experience if the service is an integral  
8 part of the program and the institution has certified that fact to the employer, except that this subsection (1)(u)  
9 does not apply to service performed in a program established for or on behalf of an employer or group of  
10 employers;

11 (v) service performed as an officer or member of the crew of a vessel on the navigable waters of the  
12 United States;

13 (w) service performed by an alien as identified in 8 U.S.C. 1101(a)(15)(F), (a)(15)(H)(ii)(a), (a)(15)(J),  
14 (a)(15)(M), or (a)(15)(Q);

15 (x) service performed in a fishing rights-related activity of an Indian tribe by a member of the tribe for  
16 another member of that tribe or for a qualified Indian entity, as defined in 26 U.S.C. 7873;

17 (y) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care  
18 for individuals who, because of age or infirmity, are unable to care for themselves when the person providing the  
19 service is employed directly by a family member or an individual who is a legal guardian;

20 (z) service performed by an individual as an official, including a timer, referee, umpire, or judge, at an  
21 amateur athletic event; or

22 (aa) services performed by an election judge appointed pursuant to 13-4-101 if the remuneration received  
23 for those services is less than \$1,000 in the calendar year.

24 (2) An individual found to be an independent contractor by the department under the terms of 39-71-417  
25 is considered an independent contractor for the purposes of this chapter. An independent contractor is not  
26 precluded from filing a claim for benefits and receiving a determination pursuant to 39-51-2402.

27 (3) This section does not apply to a state or local governmental entity, an Indian tribe or tribal unit, or a  
28 nonprofit organization defined under section 501(c)(3) of the Internal Revenue Code unless the service is  
29 excluded from employment for purposes of the Federal Unemployment Tax Act."

30

1           **Section 5.** Section 39-51-301, MCA, is amended to read:

2           "**39-51-301. Administration -- duties and powers of department -- emergency provisions.** (1) It is  
3 the duty of the department to administer this chapter ~~and it.~~ The department may adopt, amend, or rescind rules  
4 to employ persons, make expenditures, require reports, make investigations, and take action that it considers  
5 necessary or suitable in administering this chapter.

6           (2) The department shall determine its own organization and methods of procedure in accordance with  
7 the provisions of this chapter and must have an official seal, which is judicially noticed.

8           (3) Whenever the department believes that a change in contribution or benefit rates ~~will become~~ is  
9 necessary to protect the solvency of the fund, it shall promptly inform the governor and the legislature and make  
10 recommendations with respect to the change.

11           (4) The department and the board may issue subpoenas and compel testimony and the production of  
12 evidence, including books and records, in regard to any investigation or proceeding under this chapter.

13           (5) (a) In the aftermath of a disaster, as defined in 10-3-103, the department may waive, suspend, or  
14 modify its rules concerning the filing of a claim for benefits, filing continued claims, registration for work, or work  
15 search if all of the following conditions are met:

16           (i) the president of the United States declares a disaster pursuant to 42 U.S.C. 5170, et seq.; and

17           (ii) the governor issues an executive order directing the department to waive, suspend, or modify rules  
18 relating to claims.

19           (b) In a disaster declared under subsection (5)(a), the department may waive, suspend, or modify its  
20 rules relating to claims in portions of the state named by the department as appropriate to address the nature of  
21 the disaster and the purposes of unemployment insurance laws.

22           ~~(5)(6)~~ Employees transferring from the department of revenue to the department as a result of the  
23 termination of the delegation of duties associated with unemployment insurance contribution functions are entitled  
24 to all rights, including those under 2-15-131, possessed as a state officer or employee before transferring,  
25 including rights to tenure in office and of rank or grade, rights to vacation and sick pay and leave, rights under  
26 any retirement or personnel plan or labor union contract, rights to compensatory time earned, and any other rights  
27 under any law or administrative policy including the State Employee Protection Act. Employees transferring must  
28 be considered internal applicants by the department of revenue for recruitment purposes for 1 year from the date  
29 of the termination of the delegation of duties associated with unemployment insurance contribution functions.

30           ~~(6)(7)~~ The department shall succeed the department of revenue in its rights to property relating to the

1 termination of the delegation of duties associated with unemployment insurance contribution functions to the  
 2 extent that is consistent with federal property transfer policy. The property includes real property, records, office  
 3 equipment, forms, supplies, and contracts other than the program budget plan with the United States department  
 4 of labor.

5 ~~(7)~~(8) (a) The termination of the delegation of duties associated with unemployment insurance  
 6 contribution functions does not affect the validity of any pending judicial or administrative proceeding.

7 (b) All appeals that have not been heard prior to the termination of the delegation of duties associated  
 8 with unemployment insurance contribution functions must be made in accordance with the procedures identified  
 9 in 39-51-1109.

10 (c) The department must be substituted for the department of revenue and succeed to all audits,  
 11 determinations, and other actions following the date of the termination of the delegation of duties associated with  
 12 unemployment insurance contribution functions.

13 ~~(8)~~(9) The rights, privileges, and duties of the holders of bonds and other obligations issued and of the  
 14 parties to contracts, leases, indentures, and other transactions entered into before the termination of the  
 15 delegation of duties associated with unemployment insurance contribution functions remain in effect, and none  
 16 of those rights, privileges, duties, covenants, or agreements are impaired or diminished by reason of the  
 17 delegation of duties. The department is substituted for the department of revenue and succeeds to the rights and  
 18 duties under the provisions of those bonds, contracts, leases, indentures, and other transactions. The provisions  
 19 of this subsection do not apply to the program budget plan agreement between the department and the United  
 20 States department of labor."

21

22 **Section 6.** Section 39-51-405, MCA, is amended to read:

23 **"39-51-405. Signatures required on warrants.** All warrants issued ~~by the treasurer~~ for payment  
 24 pursuant to 39-51-403 or 39-51-404 shall bear the signature of the treasurer and the countersignature of a  
 25 ~~member of the department or its duly authorized agent for that purpose~~ the commissioner of labor and industry  
 26 or an agent authorized for that purpose."

27

28 **Section 7.** Section 39-51-406, MCA, is amended to read:

29 **"39-51-406. Unemployment insurance administration account.** (1) There is an account in the federal  
 30 special revenue fund to be known as the unemployment insurance administration account. All money that is

1 deposited, appropriated, or paid into this account is appropriated and made available to the department. All  
 2 money in the account must be expended solely for the purpose of defraying the costs of administration of this  
 3 chapter and costs of administration of other legislation specifically delegated by the legislature to the department  
 4 for administration.

5 (2) All money received and deposited in the account from the United States or any agency of the United  
 6 States pursuant to section 302, Title III, of the Social Security Act, ~~{42 U.S.C. 502}~~, must be expended solely for  
 7 the purpose and in the amounts found necessary by the secretary of labor for the proper and efficient  
 8 administration of this chapter.

9 (3) The account consists of:

10 (a) all money received from the United States or any agency of the United States pursuant to section  
 11 302, Title III, of the Social Security Act, ~~{42 U.S.C. 502}~~, as amended; and

12 ~~(b) all money appropriated by the state from the general fund for the purpose of administering this~~  
 13 ~~chapter; and~~

14 ~~(e)(b)~~ all money, trust funds, supplies, facilities, or services furnished, deposited, paid, and received from:

15 ~~—— (i) the United States or any agency of the United States;~~

16 ~~(ii) this state or any agency of the state;~~

17 ~~—— (iii) any other state or any of its agencies;~~

18 ~~—— (iv) political subdivisions of the state; or~~

19 ~~—— (v) any other source for administrative expense and purpose.~~

20 (4) Notwithstanding any provisions of this section, all money requisitioned and deposited in this account  
 21 pursuant to 39-51-403 through 39-51-405 must remain part of the unemployment insurance fund and must be  
 22 used only in accordance with the conditions specified in 39-51-403 through 39-51-405.

23 (5) All money in this account must be deposited, administered, and disbursed in the same manner and  
 24 under the same conditions and requirements as is provided by law for other accounts. The balance in this account  
 25 may not lapse at any time but must be continuously available to the department for expenditure consistent with  
 26 this chapter.

27 ~~(6) The state treasurer shall give a separate and additional bond conditioned upon the faithful~~  
 28 ~~performance of the treasurer's duties in connection with the unemployment insurance administration account in~~  
 29 ~~an amount to be fixed by the department and in a form prescribed by law or approved by the attorney general.~~  
 30 ~~The premiums for the bond must be paid from the money in the unemployment insurance administration account.~~

1           ~~(7)~~(6) Any reference to the unemployment insurance administration fund in this code means the  
2 unemployment insurance administration account in the federal special revenue fund."

3

4           **Section 8.** Section 39-51-1105, MCA, is amended to read:

5           **"39-51-1105. Liability of corporate officers for taxes, penalties, and interest owed by corporation.**

6           (1) The officer of a corporation whose responsibility it is to pay the taxes, penalties, and interest, as provided by  
7 39-51-1103(1) and (2) and 39-51-1125(1) and (2), is liable for the taxes, penalties, and interest due.

8           (2) (a) The department shall consider the officer of the corporation individually liable with the corporation  
9 for filing reports and unpaid taxes, penalties, and interest upon a determination that the corporate officer:

10           (i) possessed the responsibility to file reports and pay taxes on behalf of the corporation; and

11           (ii) possessed the responsibility on behalf of the corporation to direct the filing of reports or payment of  
12 other corporate obligations and exercised the responsibility that resulted in failure to file reports or pay taxes due.

13           (b) The department is not limited to considering the elements set forth in subsection (2)(a) to establish  
14 individual liability and may consider any other available information.

15           (3) ~~In the case of a corporate bankruptcy, the~~ The liability of the imposed upon an individual by this  
16 section remains unaffected by the bankruptcy of a business entity to which a discharge of penalty and interest  
17 against the corporation cannot be granted under 11 U.S.C. 727. The individual is liable for ~~any the unpaid~~ amount  
18 of taxes, penalties, and interest ~~unpaid by the corporation.~~

19           (4) ~~For determining~~ In the case of a limited liability company treated as a partnership pursuant to [section  
20 1], the liability for unemployment insurance taxes, penalties, and interest owed, a member-managed limited  
21 liability company must be treated as a partnership, with liability for taxes, penalties, and interest owed extending  
22 extends jointly and severally to each member.

23           (5) ~~For determining~~ In the case of a limited liability company that is not treated as a partnership pursuant  
24 to [section 1], liability for unemployment insurance taxes, penalties, and interest owed by a manager-managed  
25 limited liability company, extends jointly and severally to the managers of the limited liability company are jointly  
26 and severally liable for any taxes, penalties, and interest owed."

27

28           **Section 9.** Section 39-51-1109, MCA, is amended to read:

29           **"39-51-1109. Tax appeals -- procedure.** (1) A decision, determination, or redetermination of the  
30 department involving an employer-employee relationship ~~or the charging of benefit payments to employers~~ is final

1 unless an interested party entitled to notification submits a written appeal of the decision, determination, or  
 2 redetermination. The appeal must be made in the same manner as provided in 39-71-415.

3 (2) A decision, determination, or redetermination involving contribution liability, contribution rate,  
 4 application for refund, subject wages, the charging of benefit payments to employers, or other contribution-related  
 5 issues must be issued by the department and is final unless an interested party entitled to notification submits  
 6 a written appeal of the decision, determination, or redetermination. An appeal must be made in the same manner  
 7 as provided in 39-51-2402 for the appeal of a decision relating to a claim for unemployment insurance benefits.  
 8 Statutory rules of evidence and civil procedure do not apply to a hearing on the appeal. A hearing may be  
 9 conducted by telephone or by videoconference. The decision of the appeals referee and any subsequent appeal  
 10 must be made in the same manner as provided in 39-51-2403 through 39-51-2410."

11

12 **SECTION 10. SECTION 39-51-1214, MCA, IS AMENDED TO READ:**

13 **"39-51-1214. Benefit payments chargeable to employer experience rating accounts.** (1) Except for  
 14 cost reimbursement, benefits paid must be charged to the account of each of the claimant's base period  
 15 employers. The benefit charged must be based on the percentage of wages paid by the employer as compared  
 16 to the total wages paid by all employers in the claimant's base period.

17 (2) A charge may not be made to the account of a covered employer with respect to benefits paid under  
 18 the following situations:

19 (a) if paid to a worker who terminated services voluntarily without good cause attributable to a covered  
 20 employer or who had been discharged for misconduct in connection with services;

21 (b) if paid in accordance with the extended benefit program triggered by either national or state  
 22 indicators;

23 (c) if the base period employer continues to provide employment with no reduction in hours or wages;

24 (d) if benefits are paid to claimants who are in training approved under 39-51-2307; ~~or~~

25 (e) if the base period employer is ordered to military service, as defined in 10-1-1003; or

26 (f) if benefits are paid to an employee laid off as the result of the return to work of a permanent employee

27 who:

28 (i) was called to military service, as defined in 10-1-1003; and

29 (ii) had completed 4 or more weeks of military service and exercised reemployment rights under Title 10,

30 chapter 1, part 10."

1

2 **Section 11.** Section 39-51-1218, MCA, is amended to read:

3 **"39-51-1218. Rate schedules.**

4 SCHEDULES OF CONTRIBUTION RATES - Part I

5		Sched.	Sched.	Sched.	Sched.
6		I	II	III	IV
7	Minimum Ratio of Fund to Total Wages	(.0245)	(.0225)	(.0200)	(.0170)
8	Average Tax Rate	1.37	1.57	1.77	1.97
9	Rate Class	Contribution Rates for Eligible Employers			
10	1	0.00%	0.07%	0.27%	0.47%
11	2	0.07	0.27	0.47	0.67
12	3	0.27	0.47	0.67	0.87
13	4	0.47	0.67	0.87	1.07
14	5	0.67	0.87	1.07	1.27
15	6	0.87	1.07	1.27	1.47
16	7	1.07	1.27	1.47	1.67
17	8	1.27	1.47	1.67	1.87
18	9	1.47	1.67	1.87	2.07
19	10	1.67	1.87	2.07	2.27
20	Rate Class	Contribution Rates for Deficit Employers			
21	1	3.17%	3.37%	3.57%	3.77%
22	2	3.37	3.57	3.77	3.97
23	3	3.57	3.77	3.97	4.17
24	4	3.77	3.97	4.17	4.37
25	5	3.97	4.17	4.37	4.57
26	6	4.17	4.37	4.57	4.77
27	7	4.37	4.57	4.77	4.97
28	8	4.57	4.77	4.97	5.17
29	9	4.77	4.97	5.17	5.37
30	10	6.37	6.37	6.37	6.37

1	SCHEDULES OF CONTRIBUTION RATES - Part II					
2	Sched.	Sched.	Sched.	Sched.	Sched.	Sched.
3	V	VI	VII	VIII	IX	X
4	(.0135)	(.0095)	(.0075)	(.0050)	<del>(....)</del> <u>(.0025)</u>	(....)
5	2.17	2.37	2.57	2.77	2.97	3.17
6	Contribution Rates for Eligible Employers					
7	0.67%	0.87%	1.07%	1.27%	1.47%	1.67%
8	0.87	1.07	1.27	1.47	1.67	1.87
9	1.07	1.27	1.47	1.67	1.87	2.07
10	1.27	1.47	1.67	1.87	2.07	2.27
11	1.47	1.67	1.87	2.07	2.27	2.47
12	1.67	1.87	2.07	2.27	2.47	2.67
13	1.87	2.07	2.27	2.47	2.67	2.87
14	2.07	2.27	2.47	2.67	2.87	3.07
15	2.27	2.47	2.67	2.87	3.07	3.27
16	2.47	2.67	2.87	3.07	3.27	3.47
17	Contribution Rates for Deficit Employers					
18	3.97%	4.17%	4.37%	4.57%	4.77%	4.97%
19	4.17	4.37	4.57	4.77	4.97	5.17
20	4.37	4.57	4.77	4.97	5.17	5.37
21	4.57	4.77	4.97	5.17	5.37	5.57
22	4.77	4.97	5.17	5.37	5.57	5.77
23	4.97	5.17	5.37	5.57	5.77	5.97
24	5.17	5.37	5.57	5.77	5.97	6.17
25	5.37	5.57	5.77	5.97	6.17	6.37
26	5.57	5.77	5.97	6.17	6.37	6.37
27	6.37	6.37	6.37	6.37	6.37	6.37"
28						

29 **Section 12.** Section 39-51-2302, MCA, is amended to read:  
 30 **"39-51-2302. Disqualification for leaving work without good cause.** (1) An individual must be



1 disqualified for benefits if the individual has left work without good cause attributable to the individual's  
2 employment.

3 (2) The individual may not be disqualified if the individual leaves:

4 (a) employment because of personal illness or injury not associated with misconduct upon the advice  
5 of a licensed and practicing ~~physician~~ health care provider and, after recovering from the illness or injury when  
6 recovery is certified by a licensed and practicing ~~physician~~ health care provider, the individual returned to and  
7 offered service to the individual's employer and the individual's regular or comparable suitable work was not  
8 available, as determined by the department, provided the individual is otherwise eligible;

9 (b) temporary work accepted during a period of unemployment caused by a lack of work with the  
10 individual's regular employer if upon leaving the temporary work the individual returned immediately to work for  
11 the individual's regular employer, provided that the individual is unemployed for nondisqualifying reasons; or

12 (c) employment because of being ordered to military service, as defined in 10-1-1003, for a period of less  
13 than 6 weeks and the individual upon checking with the employer finds that the individual's prior employment has  
14 terminated due to the military service or for other nondisqualifying reasons. Any benefits paid under this  
15 subsection (2)(c) are not chargeable to the employer's account.

16 (3) To requalify for benefits, an individual shall perform services for which remuneration is received equal  
17 to or in excess of six times the individual's weekly benefit amount subsequent to the week in which the act  
18 causing the disqualification occurred unless the individual has been in regular attendance at an educational  
19 institution accredited by the state of Montana for at least 3 consecutive months from the date of the act that  
20 caused the disqualification. The services must constitute employment as defined in 39-51-203 and 39-51-204."

21

22 **Section 13.** Section 39-51-2304, MCA, is amended to read:

23 **"39-51-2304. Disqualification for failure to apply for or to accept suitable work.** (1) (a) An individual  
24 is disqualified for benefits if the individual fails without good cause ~~either to~~:

25 (i) apply for available and suitable work when directed to do so by the employment office or the  
26 department ~~or to~~;

27 (ii) accept an offer from a former employer or a new employer of suitable work ~~which that~~ the individual  
28 is physically able and mentally qualified to perform; ~~or to~~

29 (iii) return to customary self-employment, if any, when directed to do so by the department.

30 (b) The disqualification continues for the week in which the failure occurs and until the individual has

1 performed services for which remuneration is received equal to or in excess of six times that individual's weekly  
 2 benefit amount subsequent to the week the act causing the disqualification occurred, with a reduction in the  
 3 individual's maximum benefit amount equal to six times the weekly benefit amount, as determined by the  
 4 department, provided the individual has not left this work under disqualifying circumstances. The services must  
 5 constitute employment as defined in 39-51-203 and 39-51-204.

6 (2) In determining whether or not any work is suitable for an individual, the department shall consider:

7 (a) the degree of risk involved to the individual's health, safety, and morals;

8 (b) the individual's physical fitness and prior training;

9 (c) the individual's experience and previous earnings;

10 (d) the individual's length of unemployment and prospects for securing local work in the customary  
 11 occupation; and

12 (e) the distance of the available work from the individual's residence.

13 (3) Notwithstanding any other provisions of this chapter, including subsection (4), ~~no~~ work may not be  
 14 considered suitable and benefits may not be denied under this chapter to any otherwise eligible individual for  
 15 refusing to accept new work under any of the following conditions:

16 (a) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

17 (b) if the wages, hours, or other conditions of the work offered are substantially less favorable to the  
 18 individual than those prevailing for similar work in the locality;

19 (c) if, as a condition of being employed, the individual would be required to join a company union or to  
 20 resign from or refrain from joining any bona fide labor organization.

21 (4) Subject to subsection (3), after 13 weeks of unemployment, suitable work is work that meets the  
 22 criteria in this section and that offers 75% of the individual's earnings in previous insured work in the individual's  
 23 customary occupation. ~~No~~ An individual, however, is not required to accept a job paying less than the federal  
 24 minimum wage."

25

26 **Section 14.** Section 39-51-2306, MCA, is amended to read:

27 **"39-51-2306. Disqualification because of receipt of certain other wages, compensation, or**  
 28 **benefits.** (1) ~~Effective April 1, 1977, an~~ An individual ~~shall be~~ is disqualified for benefits for any week with respect  
 29 to which ~~he is receiving or has received~~ the individual receives payment in the form of:

30 (a) compensation for disability under the workers' compensation law or the occupational disease law of

1 this or any other state or under a similar law of the United States ~~or under the social security disability law.~~  
 2 However, when an injured claimant ~~has ceased~~ ceases to draw compensation benefits and ~~shall have returned~~  
 3 returns to the labor market, ~~he~~ the claimant ~~shall then be~~ is entitled to receive unemployment compensation  
 4 benefits under this chapter if ~~he shall be~~ the claimant is otherwise qualified. Compensation ~~which is~~ received as  
 5 a payment for a permanent partial disability ~~shall~~ may not be computed to be spread over a period of weeks in  
 6 advance so as to bar the recipient from receiving unemployment compensation benefits under this chapter;  
 7 ~~provided~~ if the recipient has returned to the labor market and is otherwise qualified.

8 (b) benefits under the Railroad Unemployment Insurance Act, 45 U.S.C. 351, et seq., or any state  
 9 unemployment compensation act or similar laws of any state or of the United States. This disqualification does  
 10 not apply to any week with respect to which an individual ~~is receiving or has received~~ receives benefits under an  
 11 unemployment compensation law of another state or of the United States if ~~such~~ the benefits are paid pursuant  
 12 to 39-51-504.

13 (2) ~~Receipt of any~~ If an individual receives wages, compensation, or benefits as set forth in subsection  
 14 (1) ~~of this section~~ after payment of unemployment benefits ~~and~~ with respect to the same week for which  
 15 unemployment benefits were received ~~will thereupon require such individual to,~~ the individual shall repay ~~such~~  
 16 the unemployment benefits, and the department may collect ~~such~~ the unemployment benefits in the same manner  
 17 as provided for collection of benefits under 39-51-3206."  
 18

19 **Section 15.** Section 39-51-2510, MCA, is amended to read:

20 "**39-51-2510. Total extended benefit amount.** The total extended benefit amount payable to ~~any~~ an  
 21 eligible individual with respect to ~~his~~ that individual's applicable benefit year ~~shall~~ must be the least of the following  
 22 amounts:

23 (1) 50% of the total amount of regular benefits ~~which that~~ were payable to ~~him~~ the individual under this  
 24 chapter in ~~his~~ the individual's applicable benefit year;

25 (2) 13 times ~~his~~ the individual's weekly benefit amount ~~which that~~ was payable to ~~him~~ the individual under  
 26 this chapter for a week of total unemployment in the individual's applicable benefit year; ~~or~~

27 (3) 39 times the individual's weekly benefit amount, less the amount of regular benefits paid or considered  
 28 paid during the individual's applicable benefit year."  
 29

30 NEW SECTION. **Section 16. Notification to tribal governments.** The secretary of state shall send

1 a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell  
2 band of Chippewa.

3  
4 NEW SECTION. Section 17. Codification instruction. [Section 1] is intended to be codified as an  
5 integral part of Title 39, chapter 51, part 2, and the provisions of Title 39, chapter 51, part 2, apply to [section 1].

6  
7 NEW SECTION. Section 18. Effective dates. (1) [SECTIONS 10, 16, AND 17 AND THIS SECTION] ARE  
8 EFFECTIVE JULY 1, 2007.

9 ~~(1)(2)~~ [Sections 2, 5 through 7, and 9, AND 11 through ~~16 and this section 15~~] are effective October 1,  
10 2007.

11 ~~(2)(3)~~ [Sections 1, 3, 4, and 8] are effective January 1, 2008.

12 - END -